

OFFICE OF EXECUTIVE POLICY AND PROGRAMS GRIEVANCE POLICY AND PROCEDURE

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS.

I. Policy

It is the policy of the Governor's Office to grant to all covered employees the opportunity to present and seek answers to a grievance or an appeal without fear of discipline, restraint, coercion, or reprisal. This grievance procedure is in compliance with the State Employee Grievance Procedure Act (Act).

Grievable Actions

As provided for in the Act, grievances or appeals shall include terminations, suspensions, involuntary reassignments in excess of thirty (30) miles from the prior work station, and demotions. Reclassifications, reassignments, and transfers within the same sate salary range are not considered grievances or appeals. However, reclassifications are considered a grievance only if the agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. However, when the agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered a grievance or an appeal.

A salary decrease, based on performance as the result of an EPMS evaluation, is an adverse employment action that may be considered as grievance or appeal. A reduction in force is also an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its

reduction in force policy or plan.

II. Procedures

Step One

If the matter was not resolved informally with the covered employee's immediate supervisor, the covered employee must notify the agency's Human Resources Administrator in writing to initiate a formal grievance. The covered employee must initiate the grievance with the Human Resources Office within fourteen (14) calendar days of the effective date of the action. The written request shall contain a brief statement of facts, the action which the employee is grieving, the employee's reason(s) for contesting the action and the relief the employee is seeking.

The Human Resources Administrator, or other designated official, shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The Human Resources Administrator, or other designated official, may conduct appropriate investigations and fact findings as he/she may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be advised in writing by the Human Resources Administrator, or other designated official, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, the Human Resources Administrator, or other designated official, will contact the covered employee and the appropriate agency representative(s), normally within five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation. Both parties must make a written decision to the Human Resources Administrator within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation. Any initial determination by the Human Resources Administrator, or other designated official, that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

With Mediation

When the covered employee and the agency representative(s) both agree in writing to participate in voluntary mediation, the Human Resources Administrator, or other designated official, will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for acquiring a mediator. The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be

confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement which both parties must sign. The mediator may share terms of the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement. If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will give written notification to the Human Resources Administrator, or other designated official, and the covered employee, that settlement has not occurred.

Without Mediation

If the matter is grievable and the covered employee or the agency submits a written decision not to participate or fails to respond timely concerning voluntary mediation, the Human Resources Administrator will promptly schedule a conference to occur between the covered employee's Office Director and the covered employee, normally within five (5) calendar days. At the conference with the covered employee's Office Director, the covered employee will have an opportunity to present his position regarding the grievance. The Office Director may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his Office Director's decision in writing within five (5) calendar days of the conference.

Step Two

To continue the grievance, the covered employee must notify the Deputy Chief of Staff for Administration within five (5) calendar days after receiving the Step One decision or upon receiving notification that settlement through mediation has not occurred. The request must be in writing consisting of a brief statement of facts and the employee's reasons for contesting the decision and the relief sought. The Deputy Chief of Staff for Administration, or his designee, will review the decision of the Office Director and the employee's written statement. The Deputy Chief of Staff for Administration, or his designee, may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The Deputy Chief of Staff for Administration, or his designee, must advise the covered employee of the final decision, in writing, within five (5) calendar days of the grievance continuance request or within the fortyfive (45) calendar-day limitation. This decision will be final within the agency.

III. Appeal to the State Human Resources Director

The Act provides for an appeal of a grievance beyond the agency to the State Human Resources Director. Any covered employee may appeal the decision of the Deputy Chief of Staff for Administration. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of

receipt of the agency's final decision or 55 (fifty-five) calendar days from the initial date the grievance was filed within the agency, whichever occurs later. As to the 55 (fifty-five) calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event the agency does not complete its entire internal grievance procedure within 45 (forty-five) calendar days from the time the grievance is initially filed within the agency. Failure by the agency to issue a final decision within this 45 (forty-five) calendar day period is considered an adverse decision. The failure to issue a final decision allows the employee to proceed with an appeal to the State Human Resources Director after 45 (forty-five) calendar days, but no later than 55 (fifty-five) calendar days from the initial date the grievance was filed within the agency. Failure by the employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

Failure by the covered employee to comply with the internal time periods in the agency grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance. The internal time periods of the agency grievance procedure, however, may be waived upon the mutual written agreement of both parties. The 45 calendar day period for action by the agency may not be waived except by mutual written agreement of both parties.

The Act allows the covered employee to appeal to the State Human Resources Director any grievance involving the issues specified in the Act after all administrative remedies to secure relief within the agency have been exhausted.

The Act provides that a covered employee has the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.

IV. Definitions

As used in the policy, unless the context clearly indicates otherwise, the following words or phrases shall mean:

1. "Agency" means the consolidated Divisions of the Governor's Office.
2. "Calendar Days" means the sequential days of a year. The time shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or an official agency holiday, it shall be excluded.
3. "Demotion" means the assignment of an employee by the appointing authority from one established position to a different established position having a lower State salary range.
- 4.

“Termination” means the action taken by an agency against an employee to separate the employee involuntarily from employment.

5.

“Covered Employee” means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. If an employee does not receive an evaluation before the official review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights, including those employees which are exempt from the grievance policy under Section 817-370 (2) of the South Carolina Code of Laws.

6.

“Suspension” means an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

V. Policy and Procedure Distribution

This Grievance Policy and Procedures statement shall be distributed to all employees.